IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 473 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL RAILWAY MANAGER - Petitioner(s)
Versus
RATANSINGH SISODIA - Respondent(s)

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Appearance :
MR NS SHEVADE for Petitioner(s) : 1,
MR CP JADHAV for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/07/2007

ORAL JUDGMENT

1. Mr.N.S. Shevade, learned counsel for the petitioner and Mr.C.P. Jadav, learned counsel for the respondent.
2. The petitioner, being aggrieved by the award dtd.1/10/1992 made by the Industrial Tribunal (Gujarat), Ahmedabad in Reference (ITC) No.44 of 1991, is before this Court.

3. Short facts necessary for disposal of the present writ application are that the respondent workman was served with a chargesheet, inquiry was conducted against him and after recording into his guilt, the Disciplinary Authority directed his termination. The appeal against the order of termination proved futile, therefore, the workman came to the Industrial Tribunal. Present petitioner employer appeared before the Industrial Tribunal, filed its pleadings and submitted that the inquiry was conducted in accordance with law, rules and regulations and the award of the punishment was commensurate with the wrong committed by the workman. However, the learned tribunal, after recording the evidence and hearing the parties, in para 15 of its judgement observed that the inquiry and award of the punishment were in accordance with law and there was nothing wrong. In para 16 of the judgement, the Industrial Tribunal rejected the technical objection raised by the petitioner and then in para 17 of the judgement, even after rejecting the Reference relating to reinstatement, it, however, directed payment of Rs.50,000=00 as compensation to the workman. It appears that being aggrieved by the dismissal of the Reference and non-

grant of the relief of reinstatement, the respondent came to this Court in Special Civil Application No.8485 of 1996. The said petition came to be dismissed on 16/1/1997. However, an observation was made by the learned Single Judge that as the respondent authority (present petitioner) had so far not questioned the validity and legality of award of Rs.50,000=00, they should comply with the directions contained in the impugned award. The said order was challenged before the Supreme Court, but leave was refused and Special Leave Petition filed by the workman was rejected.

4. It appears that thereafter the present respondent filed an application under sec.33-C-1 of the Industrial Disputes Act and claimed a sum of Rs.88,117=00. The Regional Labour Commissioner, Ahmedabad directed present petitioner to deposit, within 30 days from the date of the said order, a sum of Rs.50,000=00 with simple interest at the rate of 12% per annum.

5. Present petitioner, against whom award of Rs.50,000=00 was made, is now before this Court with a submission that the Industrial Tribunal was absolutely unjustified in awarding a sum of Rs.50,000=00 even when it held that the termination and the inquiry were legal and valid.

6. Mr.Jadav, learned counsel for the respondent had submitted that the award made by the Industrial Tribunal has been confirmed by this Court and as leave has been refused, the award has attained finality and this Court cannot interfere in the matter. It was also submitted that the respondent was required to challenge the order passed under sec.33-C-1 of the Industrial Disputes Act and as the petitioner has not challenged the said order, the writ petition cannot be continued.

7. From the facts narrated above, it would clearly appear that in the award, the learned Industrial Tribunal refused reinstatement with back wages. If this was the end of the matter, then, present petitioner was not required to challenge the award. The validity of the award is under consideration in view of the submission that despite holding the termination and inquiry to be legal and property, the Industrial Tribunal could not award Rs.50,000=00.

8. So far as the writ application filed by present respondent is concerned, it is trite to say that, the same was against the rejection of the relief of reinstatement. If a plaintiff or defendant is partly aggrieved by the award, judgement and decree, then, his challenge is confined to that part

only and if a writ challenging the award or an appeal challenging the judgement and decree in part is dismissed, then, the rest of the award or the judgement and decree do not stand confirmed automatically. If the argument raised by Mr.Jadav is accepted, then, it would lead to judicial chaos. Any person may file an appeal against the grant or rejection of a small relief and would seal the fate of the other-side. The law does not accept such a proposition. The award of Rs.50,000=00 would stand confirmed in this writ application only if the writ is dismissed.

9. In the present matter, after going through the entire material, I am unable to find even a single word to justify the award of Rs.50,000=00. I repeatedly asked Mr.Jadav as to why such amount of Rs.50,000=00 was awarded, Mr.Jadav, after taking me through some parts of the judgement, however, submitted that looking to the circumstances of the case, the award was justified.

'Looking to the circumstances of the case' is a phrase commonly used by the Courts or the Tribunal. When the Court relies upon certain circumstances of the case, then such circumstances must float on the surface

of the records or in the alternative, the party seeking relief under those special circumstances, must convince the Court that in view of such special circumstances, some relief should be given. Unfortunately, in the present case there is nothing on the records to justify the said award.

10. So far as the question relating to challenge to the order passed under sec.33-C-1 of the Industrial Disputes Act is concerned, the argument can be straightway rejected, as an argument of frustration. Proceedings Sec.33-C of the industrial, according to the opinion of the Supreme Court, are in nature of execution. If the decree itself is set aside, then, a party against whom some order is made in the execution is not required to challenge the execution, because, nothing can be executed if the decree itself is set aside.

11. In the present matter, the award was required to be executed under sec.33-C-1 of the Industrial Disputes Act and if the award does not stand the execution would fall. It was not necessary for the petitioner to challenge the order passed under sec.33-C-1 of the Industrial Disputes Act.

12. At this stage, Mr.Shevde, learned counsel for the petitioner submits that the order passed in proceedings under sec.33-C-1 was challenged before this Court in Special Civil Application No.1807 of 2005. The said writ was dismissed on 20/9/2005 with an observation that the directions issued under sec.33-C-1 of the Industrial Disputes Act shall be subject to final outcome of this writ application.

13. In view of this statement also, nothing survives to support the arguments raised by Mr.Jadav, learned counsel for the petitioner.

14. Taking into consideration the legal position and the factual aspects, I am of the opinion that the award so far as it grants compensation of Rs.50,000=00 in favour of the respondent, cannot be allowed to stand, it deserves to and is accordingly quashed.

15. The writ application is allowed with cost, quantified at Rs.2000=00 to be paid by the respondent to the petitioner.

(R.S. GARG, J.)

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